

By: Representatives Lamar, Faulkner

To: Ways and Means

HOUSE BILL NO. 1648

1 AN ACT TO AMEND SECTION 57-115-5, MISSISSIPPI CODE OF 1972,
2 TO INCREASE BY \$50,000,000.00 THE AGGREGATE AMOUNT OF INVESTMENT
3 TAX CREDITS THAT MAY BE ALLOCATED TO PARTICIPATING INVESTORS OF
4 MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANIES UNDER THE
5 MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY ACT; TO PROVIDE THE
6 TAXABLE YEARS IN WHICH A PARTICIPATING INVESTOR MAY CLAIM THE
7 ADDITIONAL CREDITS SO ALLOCATED AGAINST HIS PREMIUM TAX LIABILITY;
8 AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** Section 57-115-5, Mississippi Code of 1972, is
11 amended as follows:

12 57-115-5. (1) (a) The MDA must provide a standardized
13 format for applying for the Mississippi small business investment
14 credit authorized under this chapter, and for certification as a
15 Mississippi small business investment company.

16 (b) An applicant for certification as a primary
17 Mississippi small business investment company must:

18 (i) File an application with the MDA which shall
19 include a business plan detailing:



20 1. The approximate percentage of designated
21 capital the applicant will invest in qualified businesses by the
22 second, fourth and sixth anniversaries of its allocation date;

23 2. The industry segments listed by the North
24 American Industrial Classification System code and percentage of
25 designated capital in which the applicant will invest; and

26 3. The number of jobs that will be created or
27 retained as a result of the applicant's investments once all
28 designated capital has been invested. A job shall be considered
29 created or retained if the job pays one hundred twenty-five
30 percent (125%) of the state average annual wage and is maintained
31 for at least three (3) years. The application shall project, at a
32 minimum, that one (1) job shall be created or maintained for each
33 One Hundred Fifty Thousand Dollars (\$150,000.00) in credits
34 awarded to the participating investors of the Mississippi small
35 business investment company;

36 (ii) Pay a nonrefundable application fee of Seven
37 Thousand Five Hundred Dollars (\$7,500.00) at the time of filing
38 the application;

39 (iii) Submit as part of its application an audited
40 balance sheet that contains an unqualified opinion of an
41 independent certified public accountant issued not more than
42 thirty-five (35) days before the application date that states that
43 the applicant has an equity capitalization of Five Hundred



44 Thousand Dollars (\$500,000.00) or more in the form of unencumbered
45 cash, marketable securities or other liquid assets; and

46 (iv) Have at least two (2) principals or persons,
47 at least one (1) of which is primarily located in Mississippi,
48 employed or engaged to manage the funds who each have a minimum of
49 five (5) years of money management experience in the venture
50 capital or private equity or lending industry.

51 (c) An applicant for certification as a secondary
52 Mississippi small business investment company must:

53 (i) File an application with the MDA which shall
54 include a business plan detailing:

55 1. The approximate percentage of designated
56 capital the applicant will invest in qualified businesses by the
57 second, fourth and sixth anniversaries of its allocation date;

58 2. The industry segments listed by the North
59 American Industrial Classification System code and percentage of
60 designated capital in which the applicant will invest; and

61 3. The number of jobs that will be created or
62 retained as a result of the applicant's investments once all
63 designated capital has been invested. A job shall be considered
64 created or retained if the job pays one hundred twenty-five
65 percent (125%) of the state average annual wage and is maintained
66 for at least three (3) years. The application shall project, at a
67 minimum, that one (1) job shall be created or maintained for each
68 One Hundred Fifty Thousand Dollars (\$150,000.00) in credits



69 awarded to the participating investors of the Mississippi small
70 business investment company;

71 (ii) Pay a nonrefundable application fee of Three
72 Thousand Seven Hundred Fifty Dollars (\$3,750.00) at the time of
73 filing the application;

74 (iii) Submit as part of its application an audited
75 balance sheet that contains an unqualified opinion of an
76 independent certified public accountant issued not more than
77 thirty-five (35) days before the application date that states that
78 the applicant has an equity capitalization of One Hundred Fifty
79 Thousand Dollars (\$150,000.00) or more in the form of unencumbered
80 cash, marketable securities or other liquid assets;

81 (iv) Demonstrate that fifty percent (50%) of all
82 secondary investment company investments have been in Mississippi,
83 and all of the applicant's employees have lived in Mississippi for
84 at least two (2) years prior to the application being filed, and
85 that those who are employed or engaged to manage the funds have a
86 minimum of three (3) years of money management experience in the
87 venture capital or private equity or lending industry;

88 (v) Submit as part of its application a signed and
89 notarized partnership agreement letter with a certified primary
90 Mississippi small business investment company; and

91 (vi) Any participating partner or individual in a
92 certified secondary small business investment company that
93 successfully participated in the initial authorization and



94 allocation of credits in 2012, and which is a partner in a
95 submitted application for credits allocated in subsection (4)(b)
96 of this section, while partnered with the same primary small
97 business investment company from the previous 2012 allocation,
98 shall have the requirements in subparagraphs (iii) and (iv) of
99 this paragraph (c) waived as having been completed through the
100 previous allocation.

101 (d) The MDA may certify partnerships, corporations,
102 trusts, or limited liability companies, organized on a for-profit
103 basis, which submit an application to be designated as a
104 Mississippi small business investment company if the applicant is
105 located, headquartered, and licensed or registered to conduct
106 business in Mississippi, has as its primary business activity the
107 investment of cash in qualified businesses, and meets all of the
108 criteria of this section.

109 (e) The MDA must:

110 (i) Review the organizational documents of each
111 applicant for certification and the business history of each
112 applicant;

113 (ii) Determine whether the applicant has satisfied
114 all of the requirements of this section; and

115 (iii) Determine whether the officers and the board
116 of directors, general partners, trustees, managers or members are
117 trustworthy and are thoroughly acquainted with the requirements of
118 this chapter.



119 (f) Within forty-five (45) days after the receipt of an
120 application, the MDA may issue the certification or refuse the
121 certification and may communicate in detail to the applicant the
122 grounds for refusal, including suggestions for the removal of the
123 grounds.

124 (g) The MDA must begin accepting applications to become
125 a Mississippi small business investment company not later than
126 August 1, 2012, for credits allocated in subsection (4) (a) of this
127 section, * * * not later than August 1, 2018, for credits
128 allocated in subsection (4) (b) of this section, and not later than
129 August 1, 2023, for credits allocated in subsection (4) (c) of this
130 section.

131 (h) Certification by the MDA and operation of a primary
132 Mississippi small business investment company is not subject to
133 completion of any relationship or agreement with a secondary
134 Mississippi small business investment company, and it is not the
135 intent of this chapter to compel any such agreement.

136 (2) (a) An insurance company or affiliate of an insurance
137 company must not, directly or indirectly:

138 (i) Beneficially own, whether through rights,
139 options, convertible interest, or otherwise, fifteen percent (15%)
140 or more of the voting securities or other voting ownership
141 interest of a Mississippi small business investment company;

142 (ii) Manage a Mississippi small business
143 investment company; or



144 (iii) Control the direction of investments for a
145 Mississippi small business investment company.

146 (b) A Mississippi small business investment company may
147 obtain one or more guaranties, indemnities, bonds, insurance
148 policies, or other payment undertakings for the benefit of its
149 participating investors from any entity, except that in no case
150 can more than one (1) participating investor of a Mississippi
151 small business investment company on an aggregate basis with all
152 affiliates of the participating investor, be entitled to provide
153 guaranties, indemnities, bonds, insurance policies, or other
154 payment undertakings in favor of the participating investors of a
155 Mississippi small business investment company and its affiliates
156 in this state.

157 (c) This subsection (2) does not preclude a
158 participating investor, insurance company or other party from
159 exercising its legal rights and remedies, including, without
160 limitation, interim management of a Mississippi small business
161 investment company, in the event that a Mississippi small business
162 investment company is in default of its statutory obligations or
163 its contractual obligations to a participating investor, insurance
164 company, or other party, or from monitoring a Mississippi small
165 business investment company to ensure its compliance with this
166 chapter or disallowing any investments that have not been approved
167 by the MDA.



168 (d) The MDA may contract with an independent third
169 party to review, investigate, and certify that the applications
170 comply with the provisions of this chapter.

171 (3) (a) At the time of its investment of designated capital
172 a participating investor shall earn a vested credit against the
173 participating investor's state premium tax liability in an amount
174 equal to one hundred percent (100%) of the participating
175 investor's investment of designated capital in a Mississippi small
176 business investment company, subject to the limits imposed by this
177 section.

178 (b) From and after January 1, 2015, a participating
179 investor may claim the credit allocated in subsection (4)(a) of
180 this section as follows:

181 (i) For the 2015 taxable year, an amount equal to
182 twenty percent (20%) of the participating investor's investment of
183 designated capital;

184 (ii) For the 2016 taxable year, an amount equal to
185 twenty percent (20%) of the participating investor's investment of
186 designated capital;

187 (iii) For the 2017 taxable year, an amount equal
188 to twenty percent (20%) of the participating investor's investment
189 of designated capital;

190 (iv) For the 2018 taxable year, an amount equal to
191 twenty percent (20%) of the participating investor's investment of
192 designated capital; and



193 (v) For the 2019 taxable year, an amount equal to
194 twenty percent (20%) of the participating investor's investment of
195 designated capital.

196 (c) From and after January 1, 2021, a participating
197 investor may claim the credit allocated in subsection (4)(b) of
198 this section as follows:

199 (i) For the 2021 taxable year, an amount equal to
200 sixteen and sixty-six one-hundredths percent (16.66%) of the
201 participating investor's investment of designated capital;

202 (ii) For the 2022 taxable year, an amount equal to
203 sixteen and sixty-six one-hundredths percent (16.66%) of the
204 participating investor's investment of designated capital;

205 (iii) For the 2023 taxable year, an amount equal
206 to sixteen and sixty-six one-hundredths percent (16.66%) of the
207 participating investor's investment of designated capital;

208 (iv) For the 2024 taxable year, an amount equal to
209 sixteen and sixty-six one-hundredths percent (16.66%) of the
210 participating investor's investment of designated capital;

211 (v) For the 2025 taxable year, an amount equal to
212 sixteen and sixty-six one-hundredths percent (16.66%) of the
213 participating investor's investment of designated capital; and

214 (vi) For the 2026 taxable year, an amount equal to
215 sixteen and seven-tenths percent (16.7%) of the participating
216 investor's investment of designated capital.



217 (d) From and after January 1, 2027, a participating
218 investor may claim the credit allocated in subsection (4)(c) of
219 this section as follows:

220 (i) For the 2027 taxable year, an amount equal to
221 sixteen and sixty-six one-hundredths percent (16.66%) of the
222 participating investor's investment of designated capital;

223 (ii) For the 2028 taxable year, an amount equal to
224 sixteen and sixty-six one-hundredths percent (16.66%) of the
225 participating investor's investment of designated capital;

226 (iii) For the 2029 taxable year, an amount equal
227 to sixteen and sixty-six one-hundredths percent (16.66%) of the
228 participating investor's investment of designated capital;

229 (iv) For the 2030 taxable year, an amount equal to
230 sixteen and sixty-six one-hundredths percent (16.66%) of the
231 participating investor's investment of designated capital;

232 (v) For the 2031 taxable year, an amount equal to
233 sixteen and sixty-six one-hundredths percent (16.66%) of the
234 participating investor's investment of designated capital; and

235 (vi) For the 2032 taxable year, an amount equal to
236 sixteen and seven-tenths percent (16.7%) of the participating
237 investor's investment of designated capital.

238 (* * *e) The credit for any taxable year cannot exceed
239 the state premium tax liability of the participating investor for
240 the taxable year. If the amount of the credit exceeds the state
241 premium tax liability of the participating investor for the



242 taxable year, the excess is an investment tax credit carryover for
243 five (5) years from the date the credit is first able to be
244 utilized in accordance with paragraph (a) of this subsection (3).

245 (* * *f) Notwithstanding any provision of this chapter
246 to the contrary, the granting of any credits against the insurance
247 premium tax shall not affect the insurance premium tax receipts
248 distributed pursuant to Sections 83-1-37, 83-1-39, 83-34-39,
249 45-11-5 and 21-29-233, which shall take priority over all other
250 distributions of premium tax receipts and shall be calculated
251 based upon gross insurance premium tax liability before the
252 application of the tax credits.

253 (* * *g) A participating investor claiming a credit
254 under this chapter is not required to pay any additional
255 retaliatory tax under Section 27-15-123 levied as a result of
256 claiming the credit.

257 (* * *h) A participating investor is not required to
258 reduce the amount of tax pursuant to the state premium tax
259 liability included by the participating investor in connection
260 with ratemaking for any insurance contract written in this state
261 because of a reduction in the participating investor's tax
262 liability based on the tax credit allowed under this chapter.

263 (* * *i) If the taxes paid by a participating investor
264 with respect to its state premium tax liability constitute a
265 credit against any other tax that is imposed by this state, the
266 participating investor's credit against the other tax shall not be



267 reduced by virtue of the reduction in the participating investor's
268 tax liability based on the tax credit allowed under this chapter.

269 (* * * j) Final decertification of a Mississippi small
270 business investment company under this chapter prior to such
271 Mississippi small business investment company meeting the
272 requirements of Section 57-115-7(1)(a)(ii), shall result in the
273 disallowance and the recapture of all of the credits allocated to
274 its participating investors under this chapter. Once a
275 Mississippi small business investment company has satisfied the
276 requirements of Section 57-115-7(1)(a)(ii), any subsequent
277 decertification shall not cause the disallowance or recapture of
278 any credits allocated to its participating investors under this
279 chapter.

280 (* * * k) The credits allowed under this chapter are
281 not transferable; however, a participating investor may transfer
282 credits to an affiliated insurance company provided it gives prior
283 written notice of such transfer to the MDA and the Department of
284 Revenue.

285 (4) (a) (i) Through January 1, 2018, the aggregate amount
286 of investment tax credits that may be allocated to all
287 participating investors of Mississippi small business investment
288 companies under this section shall not exceed Fifty Million
289 Dollars (\$50,000,000.00), and no Mississippi small business
290 investment company, on an aggregate basis with its affiliates, may



291 file credit allocation claims that exceed Fifty Million Dollars
292 (\$50,000,000.00).

293 (ii) The Fifty Million Dollars (\$50,000,000.00)
294 aggregate amount of investment tax credits allocated in this
295 paragraph (a) shall be divided into a primary tax credit pool
296 which may be applied for by certified primary Mississippi small
297 business investment companies and a secondary tax credit pool
298 which may be applied for by certified secondary Mississippi small
299 business investment companies. The secondary tax credit pool
300 shall be Three Million Five Hundred Thousand Dollars
301 (\$3,500,000.00) of the total Fifty Million Dollars
302 (\$50,000,000.00) aggregate amount of investment tax credits.
303 Secondary Mississippi small business investment companies may not
304 apply for more than One Million Seven Hundred Fifty Thousand
305 Dollars (\$1,750,000.00) worth of credits on a single application.
306 A certified secondary Mississippi small business investment
307 company may apply for additional tax credit allocation from the
308 secondary tax credit pool, if the credits are available, after
309 fifty percent (50%) of its previously allocated credits are used
310 in qualified investments.

311 (iii) If there are any tax credits remaining
312 available for allocation in the secondary tax credit pool on
313 August 1, 2013, those available tax credits shall revert to the
314 primary tax credit pool and be made available to primary
315 Mississippi small business investment companies according to rules



316 and regulations promulgated by the MDA. Prior to August 1, 2013,
317 primary Mississippi small business investment companies, including
318 any wholly owned subsidiary company, shall be prohibited from
319 making application to the MDA to be additionally certified as a
320 secondary Mississippi small business investment company for
321 purposes of the tax credits allocated in this paragraph (a) and
322 prohibited from applying for any tax credit allocation from the
323 secondary tax credit pool. A certified primary Mississippi small
324 business investment company may have ownership equity in a
325 certified secondary Mississippi small business investment company,
326 but the equity interest owned by the certified primary Mississippi
327 small business investment company shall not exceed forty percent
328 (40%).

329 (b) (i) From and after July 1, 2018, through January
330 1, 2023, an additional aggregate amount of investment tax credits
331 may be allocated to all participating investors of Mississippi
332 small business investment companies under this section. The
333 amount so allocated shall not exceed Forty-five Million Dollars
334 (\$45,000,000.00), and no Mississippi small business investment
335 company, on an aggregate basis with its affiliates, may file
336 credit allocation claims on the additional aggregate amount of tax
337 credits that exceed Forty-five Million Dollars (\$45,000,000.00).

338 (ii) The Forty-five Million Dollars
339 (\$45,000,000.00) aggregate amount of investment tax credits
340 allocated in this paragraph (b) shall be divided into a primary



341 tax credit pool which may be applied for by certified primary
342 Mississippi small business investment companies and a secondary
343 tax credit pool which may be applied for by certified secondary
344 Mississippi small business investment companies. The secondary
345 tax credit pool shall be Three Million Five Hundred Thousand
346 Dollars (\$3,500,000.00) of the total Forty-five Million Dollars
347 (\$45,000,000.00) aggregate amount of investment tax credits.
348 Secondary Mississippi small business investment companies may not
349 apply for more than One Million Seven Hundred Fifty Thousand
350 Dollars (\$1,750,000.00) worth of credits on a single application.
351 A certified secondary Mississippi small business investment
352 company may apply for additional tax credit allocation from the
353 secondary tax credit pool, if the credits are available, after
354 fifty percent (50%) of its previously allocated credits are used
355 in qualified investments.

356 (iii) If there are any tax credits remaining
357 available for allocation in the secondary tax credit pool on
358 August 1, 2019, those available tax credits shall revert to the
359 primary tax credit pool and be made available to primary
360 Mississippi small business investment companies according to rules
361 and regulations promulgated by the MDA. Prior to August 1, 2022,
362 primary Mississippi small business investment companies, including
363 any wholly owned subsidiary company, shall be prohibited from
364 making application to the MDA to be additionally certified as a
365 secondary Mississippi small business investment company for



366 purposes of the tax credits allocated in this paragraph (b) and
367 prohibited from applying for any tax credit allocation from the
368 secondary tax credit pool. A certified primary Mississippi small
369 business investment company may have ownership equity in a
370 certified secondary Mississippi small business investment company,
371 but the equity interest owned by the certified primary Mississippi
372 small business investment company shall not exceed forty percent
373 (40%).

374 (c) (i) From and after July 1, 2023, an additional
375 aggregate amount of investment tax credits may be allocated to all
376 participating investors of Mississippi small business investment
377 companies under this section. The amount so allocated shall not
378 exceed Fifty Million Dollars (\$50,000,000.00), and no Mississippi
379 small business investment company, on an aggregate basis with its
380 affiliates, may file credit allocation claims on the additional
381 aggregate amount of tax credits that exceed Fifty Million Dollars
382 (\$50,000,000.00).

383 (ii) The Fifty Million Dollars (\$50,000,000.00)
384 aggregate amount of investment tax credits allocated in this
385 paragraph (c) shall be divided into a primary tax credit pool
386 which may be applied for by certified primary Mississippi small
387 business investment companies and a secondary tax credit pool
388 which may be applied for by certified secondary Mississippi small
389 business investment companies. The secondary tax credit pool
390 shall be Three Million Five Hundred Thousand Dollars



391 (\$3,500,000.00) of the total Fifty Million Dollars
392 (\$50,000,000.00) aggregate amount of investment tax credits.
393 Secondary Mississippi small business investment companies may not
394 apply for more than One Million Seven Hundred Fifty Thousand
395 Dollars (\$1,750,000.00) worth of credits on a single application.
396 A certified secondary Mississippi small business investment
397 company may apply for additional tax credit allocation from the
398 secondary tax credit pool, if the credits are available, after
399 fifty percent (50%) of its previously allocated credits are used
400 in qualified investments.

401 (iii) If there are any tax credits remaining
402 available for allocation in the secondary tax credit pool on
403 August 1, 2024, those available tax credits shall revert to the
404 primary tax credit pool and be made available to primary
405 Mississippi small business investment companies according to rules
406 and regulations promulgated by the MDA. Prior to August 1, 2027,
407 primary Mississippi small business investment companies, including
408 any wholly owned subsidiary company, shall be prohibited from
409 making application to the MDA to be additionally certified as a
410 secondary Mississippi small business investment company for
411 purposes of the tax credits allocated in this paragraph (c) and
412 prohibited from applying for any tax credit allocation from the
413 secondary tax credit pool. A certified primary Mississippi small
414 business investment company may have ownership equity in a
415 certified secondary Mississippi small business investment company,



416 but the equity interest owned by the certified primary Mississippi
417 small business investment company shall not exceed forty percent
418 (40%).

419 (* * *d) Credits must be allocated to investors in the
420 order that the credit allocation claims are filed with the MDA.

421 (* * *e) Any credit allocation claims filed with the
422 MDA before the initial credit allocation claim filing date will be
423 deemed to have been filed on the initial credit allocation claim
424 filing date. The MDA will set the initial credit allocation claim
425 filing date to be not less than one hundred twenty (120) days and
426 not more than one hundred fifty (150) days after the date the MDA
427 begins accepting applications for certification. Credit
428 allocation claims filed on the same day with the MDA must be
429 treated as having been filed contemporaneously.

430 (* * *f) If two (2) or more Mississippi small business
431 investment companies file credit allocation claims with the MDA on
432 behalf of their respective participating investors on the same day
433 and the aggregate amount of credit allocation claims exceeds the
434 aggregate limit of credits authorized under this subsection (4) or
435 the lesser amount of credits that remain unallocated on that day,
436 then the credits shall be allocated among the participating
437 investors who filed on that day on a pro rata basis with respect
438 to the amounts claimed. The pro rata allocation for any one (1)
439 participating investor is the product obtained by multiplying a
440 fraction, the numerator of which is the amount of the credit



441 allocation claim filed on behalf of a participating investor and
442 the denominator of which is the total of all credit allocation
443 claims filed on behalf of all participating investors on that day,
444 by the aggregate limit of credits authorized under this subsection
445 (4) or the lesser amount of credits that remain unallocated on
446 that day.

447 (* * *g) Within ten (10) business days after the MDA
448 receives a credit allocation claim filed by a Mississippi small
449 business investment company on behalf of one or more of its
450 participating investors, the MDA may notify the Mississippi small
451 business investment company of the amount of credits allocated to
452 each of the participating investors of that Mississippi small
453 business investment company. In the event a Mississippi small
454 business investment company does not receive an investment of
455 designated capital from each participating investor required to
456 earn the amount of credits allocated to the participating investor
457 within ten (10) business days of the Mississippi small business
458 investment company's receipt of notice of allocation, then it
459 shall notify the MDA on or before the next business day, and the
460 credits allocated to the participating investor of the Mississippi
461 small business investment company will be forfeited. The MDA may
462 then reallocate those forfeited credits among the participating
463 investors of the other Mississippi small business investment
464 companies on a pro rata basis with respect to the credit
465 allocation claims filed on behalf of the participating investors.



466 The MDA may levy a fine of not more than Fifty Thousand Dollars
467 (\$50,000.00) on any participating investor that does not invest
468 the full amount of designated capital required to fund the credits
469 allocated to it by the MDA in accordance with the credit
470 allocation claim filed on its behalf.

471 (* * *h) No participating investor, on an aggregate
472 basis with its affiliates, may file an allocation claim for more
473 than twenty-five percent (25%) of the maximum amount of investment
474 tax credits authorized under this subsection (4), regardless of
475 whether the claim is made in connection with one or more
476 Mississippi small business investment companies.

477 **SECTION 2.** This act shall take effect and be in force from
478 and after July 1, 2023.

